

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MADISON SQUARE GARDEN, L.P.,

Plaintiff,

v.

NATIONAL HOCKEY LEAGUE, NATIONAL
HOCKEY LEAGUE ENTERPRISES, L.P.,
NATIONAL HOCKEY LEAGUE INTERACTIVE
CYBERENTERPRISES, L.L.C., NHL
ENTERPRISES CANADA, L.P., and NHL
ENTERPRISES, B.V.,

Defendants.

No. 07 CIV. 8455 (LAP)

**DECLARATION OF DANIEL DAVID IN SUPPORT OF
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

I, DANIEL DAVID, declare under penalty of perjury pursuant to 28 U.S.C.

§ 1746 that the following is true and correct:

1. I am Manager, Interactive Programming, in the MSG Interactive division of Madison Square Garden, L.P. ("MSG"). Formerly, I was the Manager, Internet Marketing and Development for the New York Rangers (the "Rangers"), a professional hockey team owned by MSG. I am responsible for the design, operation and maintenance of MSG's websites for the Rangers, the New York Knicks basketball team, and the New York Liberty women's basketball team, all of which are owned by MSG. I submit this affidavit in support of MSG's motion for preliminary injunction in the above-captioned action, and I have personal knowledge of the facts stated below.

The NHL's New Media Strategy and Its Effect on Team Websites

2. In June 2006 the National Hockey League ("NHL" or the "League") adopted its so-called "New Media Strategy," which describes the League's initiatives in several areas, including the use of the Internet, websites, video and audio streaming, wireless applications within the NHL, as well as other technologies that fall under the rubric of "new media." On information and belief, since the adoption of that strategy, the League has asserted and assumed more and more control over the individual teams' websites and new media businesses.

3. For example, the NHL has announced, and reiterated at meetings I have attended, its intention to take over and standardize the look, feel and architecture, *i.e.*, the essential character, of individual team websites, to expand its control over advertising space on those sites, and to utilize team employees to generate content for the NHL. The NHL justified its taking over more advertising space on team websites as a means of defraying its costs in implementing this plan. The NHL is in the process of trying to implement this plan, which it insists is to be completed before the start of the 2007-08 season on or about September 27, 2007. The other Member Clubs have turned over their team websites to League control. On information and belief, some have done so voluntarily, presumably because they see some benefit to having the League administer their sites or they feel they cannot fully develop their website businesses on their own. Also on information and belief, others have done so somewhat reluctantly, apparently questioning the need for the League to exert this amount of control over team websites.

4. MSG believes that the NHL's seizure from the individual teams of the unique branding, competitive and outreach opportunities presented by individualized, team-

oriented websites, is not only a mistake, but eliminates competition between and among the NHL member teams. It is bad business to force each team to sacrifice this critical means of communicating with its fans and competing for new fans, and to accept instead homogenized, League-oriented design, function and content that undermines that team's marketing efforts. In particular, under the League's one-size-fits-all approach, MSG's ability to fully use its own website as a means of differentiating Rangers hockey and competing for fans will be dramatically reduced. For these and other reasons, the League's approach to team websites restrains teams from using their sites to compete with each other, particularly in areas such as the New York metropolitan area where three hockey teams are located that compete for fans.

5. In addition, the NHL has increased League-sponsored advertising and sponsorships on individual team home pages, at the expense of competitive opportunities for individual teams. The NHL has also required that team web pages be housed on the NHL's own servers. The NHL has asserted control over the sale of banner ads at the top of, and in the primary box on, team websites, thereby relegating the Rangers to less desirable positions on the website.

6. The NHL also has stated its intention to create an NHL-controlled "hockey factory" to package and exclusively exploit highlights and game footage over the Internet and wireless technologies. The teams, by contrast, are permitted only to use short segments of their own game highlights or game footage on team websites. At one point, the NHL even proposed the removal of free radio feeds from team and radio station websites.

The NHL Refuses to Allow the Rangers to Continue Operating
Their Own Website Apart from the League Mandated Platform

7. Over the summer, there were several meetings between various representatives from the League and MSG. The discussions were detailed and numerous

technical personnel from both parties became involved. At these meetings, MSG told the NHL that the Rangers wanted to continue to have their website reside on MSG's server, stating that, among other reasons, it would be able to accommodate the League's overall media strategy even with the Rangers website residing on MSG's server. MSG proposed two parallel websites, one for the League and one for the team. On the Rangers' behalf, I even offered to provide support to the NHL to ensure that the NHL's site was well programmed and that there were links connecting the two sites to facilitate fans' interaction with other teams and the league site. The NHL said this was unacceptable because there could be only one official Rangers site to avoid confusing fans and because other teams might want the same accommodation.

8. During these summer meetings, MSG expressed that it was willing to work with the League on ways to allow the League to obtain content from the Rangers and to make certain portions of the Rangers website available for League advertisers. After a series of seemingly constructive discussions on these and related issues, a lawyer for the NHL, Robert Hawkins, suggested that the parties meet again after Labor Day to talk about how the League could feed content through MSG's platform so that the League would have the ability to post content and advertising on the Rangers website. We were encouraged by this apparent constructive approach.

9. A follow-up conference call took place on September 5, 2007. To my surprise, the League reneged on the idea of continuing to allow MSG to keep the Rangers website on MSG's server. Despite MSG's being willing and able to comply with Mr. Hawkins' suggestion, the League insisted that all team websites, including the Rangers website, be operated on the League's platform. Keith Ritter, from the NHL, stated that the Rangers' proposals were unacceptable, primarily because it would take too long to implement in light of

the League's self-imposed deadline. He said the NHL would implement its plans with or without the Rangers' cooperation.

10. The League claimed in an earlier meeting that all team websites had to be on the League's platform so that the League would be able to fix a team website should one go down – arguing that if one website went unrepaired, it would reflect negatively on the entire NHL. However, MSG has the same incentive as the League in wanting to immediately repair its website in the event it goes down. The NHL also contended that it wanted individual teams to be able to lift content from another team's website and place in on their own websites, particularly when the two teams are playing each other, which (the League claimed) could only occur if the Rangers website was on the League's server. However, continuing to allow MSG to operate the Rangers website does not present any obstacle to content sharing between and among teams. The Rangers are willing to cooperate, and have cooperated, with other teams and the NHL with respect to sharing photos or other content on their websites.

11. On or about September 20, 2007, I learned that the NHL sent a letter to MSG stating that, starting on or about September 29, 2007, the League will fine the Rangers \$100,000 for each day that MSG continues to operate the Rangers website on MSG's server.

The Rangers' Unique Website Opportunities and the Impact of the NHL's Actions

12. The Rangers' success in the 2006-07 playoffs presents a special opportunity for the team to recruit new fans over the next few years. During the offseason, MSG invested in the acquisition of key players, superstars Chris Drury and Scott Gomez, which should dramatically increase the Rangers' chances of winning the NHL's Stanley Cup Championship in 2007-08. By making these personnel investments the Rangers hope, during this coming season,

to substantially grow their fan base, promote their marks and related products, and increase revenue from ticket sales, advertising and merchandising.

13. The League, however, has now directed that the Rangers (i) turn over to the NHL effective control over the format, design and operation of the team's website and (ii) cease operating the MSG's own Rangers website. The Rangers website is a unique means by which the team engages in outreach to Rangers fans and potential fans in competition with other NHL clubs, and – in the absence of the NHL's planned takeover – MSG fully expected to be able to use the website to take full advantage of the special opportunity presented by the Rangers' recent and expected future success on ice. If, as the League now demands, MSG had to stop operating the Rangers official website, it would hobble a critical channel of communication between the Rangers and their fans, and potential new fans, and irreparably damage our ability to build the Rangers fan base.

14. If MSG were forced to cease operating its own Rangers website and turn the site over to League control, the League would be able to discern through League servers such information as customer traffic patterns and demographic information that MSG now holds as confidential information and uses to develop competitive strategies, design marketing promotions and initiatives, make improvements to the site, attract advertisers, increase sales and otherwise to compete with other teams and the NHL. In addition, if the official Rangers site were to be run through League servers, the League would be in a position, if it chose to do so, to share this information with other teams with which MSG competes.

15. In addition, once the League controls the Rangers website and if it gains control of the Rangers web address, it will have expropriated MSG's investment into developing the website and the traffic associated with it. The League will derive the benefit of this traffic –

for example, users who have bookmarked the Rangers website or are simply looking for the Rangers website will be directed to the NHL website and may wrongly believe they are on the Rangers website.

16. The League's directive to MSG to cease operating the Rangers website would bring about this harm at the worst possible time. Our history and experience have shown that teams on the upswing in terms of talent and the potential for playoff success, as the Rangers are right now, experience disproportionate growth in the addition of new fans, increased revenues from the sale of tickets and trademarked products, larger advertising and sponsorship revenues, and increased viewership of games. The Rangers already have been experiencing these benefits as the result of our playoff success last year and the team's personnel acquisitions during the off-season. In addition, over the last few months, we have seen a substantial increase in the number of unique users on the Rangers website compared to the same period a year ago. This indicates growing excitement about the team, and demonstrates the critical role of the website as a means of facilitating communication between fans and with the team. If handled properly, the Rangers website will present a great opportunity for solidifying fan support and recruiting the next generation of fans. If the League prohibits individual teams from fully controlling how content is presented to their own fans, this competitive opportunity likely will be irretrievably lost, harming MSG in particular in an area like New York where three teams exist that try to attract fans.

17. The NHL's latest actions come at a time when the business of using websites to promote NHL hockey clubs is still at an early stage of commercial development. The Internet continues to evolve as a means by which (i) NHL teams communicate with and attract fans, (ii) sponsors and advertisers gain access to advertising opportunities with NHL clubs,

and (iii) teams generate revenue. The very business of using team websites to communicate with fans and potential customers presents a unique and perishable business opportunity for teams in terms of fan recruitment and distribution of products and services, including the games themselves. With the rapid and continuing technological advancements in today's world, more and more fans – and, in particular, younger and technologically-savvy hockey fans – look to the Internet and wireless platforms, among other things, to choose their allegiances to and communicate with their teams, to receive team information, to watch hockey games, highlights and other promotional content, and to buy team merchandise.

18. The Rangers website is a special and well-branded distribution channel for MSG to reach out to established and new fans and to promote and sell Rangers products and services. The team website is thus among MSG's best means of building, maintaining and communicating with existing and potential Rangers fans and customers, and distributing content. On information and belief, the fans that MSG attracts and secures through the Rangers website go on to, among other things, purchase tickets, memorabilia, and promotional content, thus providing substantial revenue to MSG. The website also provides significant sponsorship and advertising opportunities.

19. We have seen that younger hockey fans, in particular, are making decisions now about the team they will support and, not surprisingly in these technologically oriented days, they rely more heavily on interaction through the web, as opposed to more traditional methods, to take in team-oriented content. Individual team efforts to recruit potential fans in competition with each other will be harmed irreparably if the NHL is allowed to coerce the Rangers into relinquishing their website to the League.

The Effect of the NHL's Actions on Rangers Fans

20. Under the NHL's approach, the exciting viewer experience that the Rangers seek to promote on their existing website will be replaced by a standardized approach to website design, openly aimed more at promoting hockey in a general sense than the Rangers as an individual team.

21. Rangers fans and customers have developed high expectations as a result of years of devoted work and expense by MSG to establish a unique and high quality product, centered on the Rangers, on the team's website. Anything of a lesser quality will disappoint those expectations and dilute the goodwill and reputation associated with the Rangers. This harm to the team's goodwill and reputation likely will be seen in several ways. First, if the team website is changed to the NHL format supported by different software with different capabilities, it is inevitable that long-time Rangers fans – who are accustomed to and comfortable with the Rangers current website – will complain about and become disenchanted with the mechanical aspects of the new site. Many users will become confused by the different software employed by the NHL on its website, and may decide (out of frustration) to stop accessing it, all to the detriment of the Rangers' competitive efforts. For example, the Rangers experienced this phenomenon when they merely changed the software for their website message board in 2005. In that instance, the team received numerous complaints about changes in the format, new key strokes required to perform different functions, and in the system's changed capabilities. It took years for the Rangers to build their message board activity back to its prior level.

22. Second, Rangers fans, a group that identifies closely and personally with the team, not the League, will be alienated by seeing their team's site administered and run by the NHL, ostensibly by non-Rangers personnel. Rangers fans are fiercely loyal to their team.

They routinely refer to the team on the web message board in terms of “us” and “we,” as opposed to the “they” and “them” used for other teams or the League office. The Rangers website-using fans access the site to communicate with the Rangers, not with the NHL. They want to read what the Rangers post on their own site about matters such as their team, its players, its prospects and upcoming events. They recognize that they can read League-wide promotions or news on NHL.com, to the extent they are interested in this information. The fans themselves promote and enjoy rivalries with other teams, and they do not sign on the website to see balanced presentations about their rivals. Indeed, one of the more troublesome aspects of the NHL website (from the perspective of Rangers fans) is likely to be the NHL’s insistence that League-wide news items be displayed on the home page of every team. Thus, a Rangers fan could log on to his team’s site and be presented with a headline about the despised Islanders, Devils or another team. This on its own is likely to drive away or annoy many Rangers fans.

23. In short, the Rangers have understood for some time now that hockey is a unique sport in terms of fan loyalty and interest. Fans in other sports might watch baseball or football games even if their favorite team is not playing, but Rangers’ fans tend to be concerned more directly and narrowly with the team to which they give their allegiance, not League-wide hockey in a generic sense. This tendency is evidenced by the significant drop in local television ratings in the New York metropolitan area when the Rangers are not in the playoffs. The Rangers have recognized, and designed their website around the notion that the emotion of the fans about the team itself – not the League and not even the game itself – is a significant revenue driver. Recognizing this, the NHL’s approach to team websites is aimed at using this emotional connection that fans feel for their team to increase traffic and revenue for the League’s own site. The likely response of many website-using Rangers fans will be to question why the Rangers

have “sold out” and allowed their team site to be merged with the League’s site, and even to stop accessing the team site altogether. They likely will blame the team for this change, or at the very least their allegiance to the Rangers’ site will be weakened substantially by the entire affair. The Rangers fear that, absent the personalized communications afforded by the Rangers website, fans will just as likely go to the websites of other entities, like ESPN, to get their news and updates about the Rangers – there is no reason to assume that they will use the NHL site. In the end, if MSG loses these present and potential customers they may never return even if the Rangers website is returned to MSG at the conclusion of the lawsuit.

The Flaws In The NHL’s “Rangers” Website

24. On September 28, 2007, the League, without MSG’s permission, launched its own “Rangers” website, NHL.com. It is, as expected, in the League’s “cookie-cutter” format, except to the extent that enormous sections of the real Rangers site at nyrangers.com have been lifted wholesale into the League’s “Rangers” site including pictures, stories, logos, page designs and data. Remarkably, the League has even gone so far as to pronounce across the top of its “Rangers” home page that it is “The Official site of the New York Rangers” which simply is not true.

25. Despite the League’s effort to duplicate the Rangers page by copying it from MSG’s site, it has failed. A fan who accesses the League’s “Rangers” web page will find a site of significantly lower quality, lacking, among other things, critical interconnectivity features that enhance the fan experience. The League’s use of a website designed to fit all teams and to accommodate the lowest common denominator will undermine fans’ perception of the Rangers, and evidences a profound misunderstanding of the Rangers and Rangers fans. As a consequence, if MSG had to shut down its own Rangers site leaving the League’s site as the only Rangers website available, Rangers fans would have a significantly diminished experience on the website,

no different from accessing the site of any other team, thus removing the competitive advantage the Rangers' own site now provides. In sum, if the Rangers were forced to rely on the League's website to compete with other teams, it would be no competition, at all. The League site contains team web pages of similar features and mundane quality. Thus, MSG would be deprived of the chance to use its website to compete by differentiating itself on its own website.

26. As an example (and it is only one of many) the League's website eliminates from its standardized navigation bar a "History" button that appears on MSG's Rangers website. The Rangers are an "Original Six" NHL team, and their long and storied history is a critical marketing tool. The history of the Rangers, fan nostalgia, and the continuity Rangers fans have with prior generations of fans all can be experienced through the "History" tab on MSG's Rangers website. The elimination of that front-and-center access to Rangers history would put the Rangers on an even footing with all of its competitors within the League, making the Rangers fungible with teams that have only been in the League for a few years. Thus, the League website would remove, or at least significantly diminish, the Rangers' ability to use their particular history as a means of differentiating the Rangers from other clubs.

27. Similarly, aspects of MSG's Rangers website that are expressly designed to foster interconnection between Rangers fans and the team and other fans have been diminished or eliminated on the League's site. Thus, for example, a feature in the "Fan Zone" section of the MSG website, called "Blueshirt Fanatics," allows fans to post pictures of themselves, dressed in Rangers regalia, on the site. On the League's "Rangers" site, the League has simply copied more than 400 pictures currently posted on MSG's site, but provides *no* mechanism for fans to add their pictures. Hence, what was an interactive feature for fans,

inviting them to participate on the site with other fans would become, on the League's site, merely a collection of pictures to which a new fan cannot contribute.

28. Other quality failures on the League's site will cause harm to the Rangers. For example, the League has eliminated from its "Rangers" site a tab on the navigation bar for "Junior Rangers," which directs young Ranger fans to such features as "Junior Ranger All-Stars," which contains a trading cards function and other youth-oriented features. Some of these features are sprinkled elsewhere within the League pages, but the net effect of the removal of "Junior Rangers" from the basic navigation bar is to diminish the site.

29. Perhaps the best example of the diminished competitive value of the League's "Rangers" site is on the home page, which eliminates many significant features found on the home page of MSG's Rangers site. These include Rangers on Demand, a video playing feature, loaded with Rangers historical footage, game highlights, player interviews and other Ranger-oriented content. In its place, the League has substituted "Rangers TV" which, in reality, directs the viewer to a site showing some Ranger clips, but with voice-overs talking and other features generically about "NHL Hockey".

30. Similarly, the home page on the League's "Rangers" site does not have other important features found on MSG's site, such as links to the Wolf Pack, a Rangers minor league affiliate, a feature called "Games Night Experience," which identifies music played during games at Madison Square Garden, a link to the Rangers newsletter, and a feature that allows season ticket holders to manage their accounts.

31. Other significant revenue-producing features that are not prominently displayed, or do not exist at all, on the League's "Rangers" home page include features such as a

ticket exchange, a navigational link to MSG's other websites and prime advertising positions that MSG would otherwise be able to sell advertising.

32. In sum, the League's "Rangers" site is simply no substitute for MSG's Rangers website in terms of content, quality and fan interaction with the team. Fans who are led to believe the League operated site is actually the "Official site of The New York Rangers" will enjoy a much less satisfying Rangers experience. They will, in essence, be visiting a page that is no better than any other team's page. As a result, if MSG cannot run its own Rangers site this critical means of differentiating the Rangers from, and competing with, other teams will be lost.

The NHL Will Not Be Harmed if the Rangers Retain Control Over Their Website

33. On information and belief, the NHL will not be harmed if this Court allows MSG to operate the Rangers website as it has been doing for years and to explore website-related opportunities. This will result in no real harm to the NHL as it has been operating for years under the current environment in which teams control their own websites. As an interim measure, the League can continue doing what it does now – its website provides a link to the Rangers own site for fans interested in accessing Rangers information. Or, MSG does not have any objection to the League creating its own Rangers website, housed on the NHL server, so long as MSG can continue to run its current website, newyorkrangers.com, as the official New York Rangers website on its own platform. Thus, the NHL can still launch its new website, which gives access to every team's websites, just not in the exact format the League wants. If the existing link arrangement is maintained, the Rangers can still control their own site and the League's site will include all 30 teams (from the perspective of fans).

Dated: New York, New York
September 30, 2007

A handwritten signature in cursive script, appearing to read "Daniel David", is written over a horizontal line.

DANIEL DAVID

CERTIFICATE OF SERVICE

I declare that on October 4, 2007, I caused the attached, DECLARATION OF DANIEL DAVID IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION, to be served by hand-delivery on the following counsel:

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I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
October 4, 2007

JONES DAY

By: /s/ Robert W. Gaffey

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